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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ALICIA HARRIS, as an individual and on
11 behalf of all others similarly situated,

12 Plaintiffs,

13 vs.

14 VECTOR MARKETING
CORPORATION, a Pennsylvania
15 corporation; and DOES 1 through 20,
inclusive,

16 Defendants.
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No.: CV 08 5198 EMC

STIPULATED PROTECTIVE ORDER
AND [PROPOSED] ORDER

Complaint Filed: October 15, 2008

Trial Date: June 6, 2011

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

1 This stipulation is entered into by plaintiff Alicia Harris (“plaintiff”) and
2 defendant Vector Marketing Corporation (“defendant”), as follows:

3 1. GOOD CAUSE STATEMENT

4 Documents and information sought and exchanged in discovery in this
5 action may contain, disclose or relate to confidential or sensitive personal, financial,
6 business or commercial information of plaintiff, defendant, and members of the
7 putative class, including, but not limited to, personal contact information, telephone
8 records, and confidential and proprietary business plans and materials, such that the
9 broad dissemination of information outside of this litigation could result in the
10 unwarranted disclosure and use of personal contact information and confidential and
11 sensitive information and may violate individual privacy rights.

12 2. PURPOSES AND LIMITATIONS

13 Disclosure and discovery activity in this action are likely to involve
14 production of confidential, proprietary, or private information for which special
15 protection from public disclosure and from use for any purpose other than prosecuting
16 this litigation would be warranted. Accordingly, the parties hereby stipulate to and
17 petition the court to enter the following Stipulated Protective Order. The parties
18 acknowledge that this Order does not confer blanket protections on all disclosures or
19 responses to discovery and that the protection it affords from public disclosure and use
20 extends only to the limited information or items that are entitled under the applicable
21 legal principles to treatment as confidential. The parties further acknowledge, as set
22 forth in Section 13, below, that this Stipulated Protective Order creates no entitlement
23 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
24 procedures that must be followed and reflects the standards that will be applied when
25 a party seeks permission from the court to file material under seal.

26 3. DEFINITIONS

27 3.1 Party: any party to this action, including plaintiff Alicia Harris and
28 defendant Vector Marketing Corporation, including all of her or its officers, directors,

1 employees, consultants, retained experts, and Outside Counsel of Record (and their
2 support staff).

3 3.2 Non-Party: any natural person, partnership, corporation,
4 association, or other legal entity not named as a Party to this action.

5 3.3 Disclosure or Discovery Material: all items or information,
6 regardless of the medium or manner generated, stored, or maintained (including,
7 among other things, testimony, transcripts, or tangible things) that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 3.4 “CONFIDENTIAL” information or Items: information (regardless
10 of how generated, stored or maintained) or tangible things that qualify for protection
11 under standards developed under F.R.Civ.P. 26(c).

12 3.5 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3.6 Producing Party: a Party or non-party that produces Disclosure or
15 Discovery Material in this action.

16 3.7 Designating Party: a Party or non-party that designates
17 information or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL.”

19 3.8 Challenging Party: A Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 3.9 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL.”

23 3.10 Outside Counsel of Record: attorneys who are not employees of a
24 Party but who are retained to represent or advise a Party and have appeared in this
25 action on behalf of that Party or are associated with a law firm which has appeared on
26 behalf of that Party, including attorneys at the law firms of Diversity Law Group, Law
27 Offices of Sherri Jung, Marlin & Saltzman, and Reed Smith.
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1 3.11 House Counsel: attorneys who are employees of a Party. House
2 Counsel does not include any Outside Counsel of Record or any other outside counsel.

3 3.12 Counsel (without qualifier): Outside Counsel of Record and House
4 Counsel (as well as their support staffs).

5 3.13 Expert: a person with specialized knowledge or experience in a
6 matter pertinent to the litigation who has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this action.

8 3.14 Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
10 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
11 their employees and subcontractors.

12 4. SCOPE

13 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also any information copied or extracted
15 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
16 testimony, conversations, or presentations by parties or counsel to or in court or in
17 other settings that might reveal Protected Material. However, the protections
18 conferred by this Stipulation and Order do not cover the following information: (a)
19 any information that at the time of disclosure to a Receiving Party is in the public
20 domain or after its disclosure to a Receiving Party becomes part of the public domain
21 as a result of publication not involving a violation of this Order; or (b) any
22 information known to the Receiving Party prior to the disclosure or obtained by the
23 Receiving Party after the disclosure from a source who obtained the information
24 lawfully and under no obligation of confidentiality to the Designating Party. Any use
25 of Protected Material at trial shall be governed by a separate agreement and/or order.

26 5. DURATION

27 Even after final disposition of this litigation, the confidentiality
28 obligations imposed by this Order shall remain in effect until a Designating Party

1 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
2 be deemed to be the later of (1) dismissal of all claims and defenses in this action,
3 with or without prejudice; or (2) final judgment herein after the completion and
4 exhaustion all appeals, rehearings, remands, trials or reviews of this action, including
5 the time limits for the filing of any motions or applications for extension of time
6 pursuant to applicable law.

7 6. DESIGNATING PROTECTED MATERIAL

8 6.1 Exercise of Restraint and Care in Designating Material for
9 Protection. Each Party or non-party that designates information or items for protection
10 under this Order must take care to limit any such designation to specific material that
11 qualifies under the appropriate standards. To the extent it is practical to do so, the
12 Designating Party should designate for protection only those parts of material,
13 documents, items, or oral or written communications that qualify - so that other
14 portions of the material, documents, items, or communications for which protection is
15 not warranted are not swept unjustifiably within the ambit of this Order.

16 Mass, indiscriminate, or routinized designations are prohibited.
17 Designations that are shown to be clearly unjustified, or that have been made for an
18 improper purpose (e.g., to unnecessarily encumber or retard the case development
19 process, or to impose unnecessary expenses and burdens on other parties), expose the
20 Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items
22 that it designated for protection do not qualify for protection do not qualify for
23 protection, that Designating Party must promptly notify all other parties that it is
24 withdrawing the mistaken designation.

25 6.2 Manner and Timing of Designations. Except as otherwise provided
26 in this Order (see, e.g., second paragraph of section 6.2(a), below), or as otherwise
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
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1 under this Order must be clearly so designated before the material is disclosed or
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic
5 documents but not transcripts of depositions or other pretrial or trial proceedings), that
6 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains
7 protected material. If only a portion or portions of the material on a page qualifies for
8 protection, the Producing Party also must clearly identify the protected portion(s)
9 (e.g., by making appropriate markings in the margins)

10 A Party or non-party that makes original documents or materials
11 available for inspection need not designate them for protection until after the
12 inspecting Party has indicated which material it would like copied and produced.
13 During the inspection and before the designation, all of the material made available
14 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
15 identified the documents it wants copied and produced, the Producing Party must
16 determine which documents, or portions thereof, qualify for protection under this
17 Order, then, before producing the specified documents, the Producing Party must affix
18 the “CONFIDENTIAL” legend to each page that contains Protected Material. If only
19 a portion or portions of the material on a page qualifies for protection, the Producing
20 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
21 markings in the margins).

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Designating Party identify on the record, before the close of the
24 deposition, hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary,
26 and for any other tangible items, that the Producing Party affix in a prominent place
27 on the exterior of the container or containers in which information or item is stored the
28 legend “CONFIDENTIAL.” If only portions of the information or item warrant

1 protection, the Producing Party, to the extent practicable, shall identify the protected
2 portions.

3 6.3 Inadvertent Failures to Designate. If timely corrected, an
4 inadvertent failure to designate qualified information or items does not, standing
5 alone, waive the Designating Party's right to secure protection under this Order for
6 such material. Upon timely correction of a designation, the Receiving Party must
7 make reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order.

9 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a Designating
12 Party's confidentiality designation is necessary to avoid foreseeable substantial
13 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
14 the litigation, a Party does not waive its right to challenge a confidentiality designation
15 by electing not to mount a challenge promptly after the original designation is
16 disclosed.

17 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of each designation it is challenging
19 and describing the basis for each challenge. To avoid ambiguity as to whether a
20 challenge has been made, the written notice must recite that the challenge to
21 confidentiality is being made according to this specific paragraph of the Protective
22 Order. The parties shall attempt to resolve each challenge in good faith and must
23 begin the process by conferring directly within fourteen days of the date of service of
24 notice (in voice to voice dialogue; other forms of communication are not sufficient).
25 In conferring, the Challenging Party must explain the basis for its belief that the
26 confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and, if
28 no change in designation is offered, to explain the basis for the chosen designation. A

1 Challenging Party may proceed to the next stage of the challenge process only if it has
2 engaged in this meet and confer process first or establishes that the Designating Party
3 is unwilling to participate in the meet and confer process in a timely manner.

4 7.3 Judicial Intervention. If the Parties cannot resolve a challenge
5 without court intervention, the Designating Party shall file and serve a motion under
6 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) to
7 retain confidentiality within 21 days of the initial notice of challenge or within
8 fourteen days of the parties agreeing that the meet and confer process will not resolve
9 their dispute. Each such motion must be accompanied by a competent declaration that
10 affirms that the movant has complied with the meet and confer requirements imposed
11 in the preceding paragraph. Failure by the Designating Party to make such a motion
12 or to file such declaration within 21 days shall automatically waive the confidentiality
13 designation for each challenged designation. Notwithstanding this provision, the
14 Challenging Party may file a motion challenging a confidentiality designation at any
15 time if there is good cause for doing so, including a challenge to the designation of a
16 deposition transcript or any portions thereof. Any motion brought pursuant to this
17 provision must be accompanied by a competent declaration affirming that the movant
18 has complied with the meet and confer requirements imposed by the preceding
19 paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on
21 the Designating Party. Frivolous challenges, or those made for an improper purpose
22 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
23 expose the Challenging Party to sanctions. Until the court rules on the challenge, all
24 parties shall continue to afford the material in question the level of protection to which
25 it is entitled under the Producing Party's designation.

26 8. ACCESS TO AND USE OF PROTECTED MATERIAL

27 8.1 Basic Principles. A Receiving Party may use Protected Material
28 that is disclosed or produced by another Party or by a non-party in connection with

1 this case only for prosecuting, defending, or attempting to settle this litigation. Such
2 Protected Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the litigation has been terminated, a
4 Receiving Party must comply with the provisions of section 15, below (FINAL
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at
7 a location and in a secure manner that ensures that access is limited to the persons
8 authorized under this Order.

9 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated CONFIDENTIAL
12 only to:

13 (a) The Receiving Party's Outside Counsel of Record in this action, as
14 well as employees of said Counsel to whom it is reasonably necessary to disclose the
15 information for this litigation and who have signed the "Agreement to Be Bound by
16 Protective Order" that is attached hereto as Exhibit A;

17 (b) the officers, directors, and employees (including House Counsel)
18 of the Receiving Party to whom disclosure is reasonably necessary for this litigation
19 and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to whom
21 disclosure is reasonably necessary for this litigation and who have signed the
22 "Agreement to Be Bound by Protective Order" (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, professional jury or trial consultants,
25 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
26 for this litigation and who have signed the "Agreement to Be Bound by Protective
27 Order" (Exhibit A);
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(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a person who otherwise possessed or knew the information.

9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving-Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL” that Party must:

(a) promptly notify in writing the Designating Party. Such notification must include a copy of the subpoena or court order;

(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued or obtaining the Designating Party’s permission. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material - and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful
2 directive from another court.

3 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
4 PRODUCED IN THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by
6 a non-party in this action and designated as "CONFIDENTIAL," and such
7 information produced by non-parties in connection with this litigation is protected by
8 the remedies and relief provided by this Order. Nothing in these provisions should be
9 construed as prohibiting a non-party from seeking additional protections.

10 (b) In the event that a Party is required by a valid discovery request to
11 produce a non-party's confidential information in its possession and the Party is
12 subject to an agreement with the non-party not to produce the non-party's confidential
13 information, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the non-
15 party that some or all the confidential information requested is subject to the
16 confidentiality rights of a non-party,

17 (2) promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
19 particular description of the information requested; and

20 (3) make the information requested available for inspection by
21 the non party.

22 (c) If the non-party fails to object or seek a protective order from this
23 Court within fourteen days of receiving the notice and accompanying information, the
24 Receiving Party may produce the non-party's confidential information responsive to
25 the discovery request. If the non-party timely seeks a protective order, the Receiving
26 Party shall not produce any information in its possession or control that is subject to
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28

1 the confidentiality rights of the non-party.¹ Absent a Court order to the contrary, the
 2 Non-Party shall bear the burden and expense of seeking protection in this Court of its
 3 Protected Material.

4 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

5 If a Receiving Party learns that, by inadvertence or otherwise, it has
 6 disclosed Protected Material to any person or in any circumstance not authorized
 7 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 8 notify in writing the Designating Party of the unauthorized disclosures, (b) use its best
 9 efforts to retrieve all copies of the Protected Material, (c) inform the person or persons
 10 to whom unauthorized disclosures were made of all the terms of this Order, and (d)
 11 request such a person or persons to execute the “Acknowledgement and Agreement to
 12 Be Bound” that is attached hereto as Exhibit A.

13 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 14 PROTECTED MATERIAL

15 When a producing party gives notice to the other parties that certain
 16 inadvertently produced material is subject to a claim of privilege or other protection,
 17 the obligations of the parties that received such material are those set forth in Rule
 18 26(b)(5)(B) of the Federal Rules of Civil Procedure. This provision is not intended to
 19 modify whatever procedure may be established in an e-discovery order that provides
 20 for production without prior privilege review.

21 13. FILING PROTECTED MATERIAL

22 Without written permission from the Designating Party or a court order
 23 secured after appropriate notice to all interested persons, a Party may not file in the
 24 public record in this action any Protected Material. A Party that seeks to file under
 25 seal any Protected Material must comply with Civil Local Rule 79-5. Protected
 26

27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a non-party
 28 and to afford the interested parties an opportunity to protect their confidentiality interests in this Court.

1 material may only be filed under seal pursuant to a Court order authorizing the sealing
2 of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing
3 order will issue only upon a request establishing that the Protected Material at issue is
4 privileged or protectable as a trade secret or otherwise entitled to protection under the
5 law.

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of
8 any person to seek its modification by the Court in the future.

9 14.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any
13 ground to use in evidence of any of the material covered by this Protective Order.

14 15. FINAL DISPOSITION

15 Within sixty days after the final disposition of this action, as defined in
16 section 5, each Receiving Party must return all Protected Material to the Producing
17 Party or destroy such material and provide written certification under oath of such
18 destruction. As used in this subdivision, "all Protected Material" includes all copies,
19 abstracts, compilations, summaries or any other form of reproducing or capturing any
20 of the Protected Material. Whether the Protected Material is returned or destroyed,
21 the Receiving Party must submit a written certification to the Producing Party (and, if
22 not the same person or entity, to the Designating Party) by the sixty day deadline that
23 identifies (by category, where appropriate) all the Protected Material that was returned
24 or destroyed and that affirms that the Receiving Party has not retained any copies,
25 abstracts, compilations, summaries or other forms of reproducing or capturing any of
26 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain
27 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
28 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

reports, attorney work product and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 5 (DURATION), above.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: April 22, 2010

Marlin & Saltzman

By: _____/s/

Christina Humphrey
Attorneys for Plaintiff

Dated: April 22, 2010

REED SMITH, LLP

By: _____/s/

John P. Zaimes
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED

4/30/10

DATED: _____

Edward M. Chen
United States District Judge

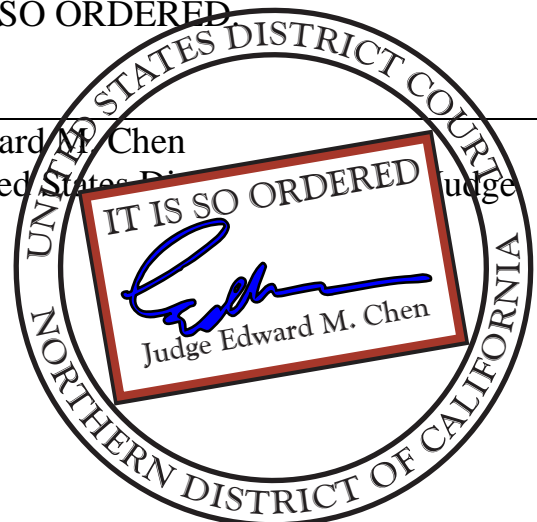


EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Northern District of California on
 [date] in the case of _____ [insert formal name of the case and the number
 and initials assigned to it by the court]. I agree to comply with and to be bound by all
 the terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any information
 or item that is subject to this Stipulated Protective Order to any person or entity except
 in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Northern District of California for the purpose of enforcing the terms of
 this Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print or type full
 name] of _____ [print or type full
 address and telephone number] as my California agent for service of process in
 connection with this action or any proceedings related to enforcement of this
 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]